

Application No. 10/617,063

### REMARKS

Claims 1-16 are pending in this application. Claims 3-7, 10, 11, 14 and 16 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 1, 2, 9, 10, 12, 13, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Fishbein (US Patent No. 3,702,611). Claims 1-3, 5, 6, 9-11, 15 and 16 stand rejected under 35 U.S.C. 102(e) as being anticipated by Kuslich et al (US Patent No. 6,383,188). Claims 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kuslich et al. Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Fishbein (US Patent No. 3,702,611). Claim 4 stands objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form and to correct for indefiniteness. Claim 14 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph. Reconsideration of the rejections and objections is hereby solicited in view of the foregoing amendments and the following remarks.

Claims 4-7, 10, 11, 14 and 16 have been amended to correct the informalities. Accordingly, with regard to the rejection of these claims under 35 U.S.C. 112, second paragraph, claims 4-7, 10, 11, 14 and 16 are submitted to be in condition for allowance.

Claim 1 has been amended to incorporate the limitations of objected to claim 4. Claims 2-4 have been cancelled. Claim 5 has been amended to depend from claim 1. Accordingly, claim 1, and claims 5-13 depending directly or indirectly therefrom, are believed to be in condition for allowance.

Claims 15 and 16 have been canceled herein.

New claim 17 has been added. Claim 17 includes features not taught or suggested in any of the cited prior art. Specifically, claim 17 recites a "plurality of segments being generally symmetrically distributed about a center point of the reaming head, each of the plurality of segments being extendable along radial lines away from the center point." In contrast, Fishbein appears to teach

## Application No. 10/617,063

segments (e.g., cutters 36) that are pivoted about respective pivot pins 48 to extend or retract the cutters 36 in a wing-like fashion. See, for example, Fishbein, FIG. 3, column 3, lines 37-48 and column 4, lines 8-11. Accordingly, the cutters of Fishbein are moved by rotation about respective pivot pins 48, not by extension along a radial line away from the center point, as recited in new claim 17. The cutters 36 of Fishbein, being configured for rotation, are completely different than the radially extendable segments of the present invention.

In addition, new claim 17 recites a "reaming head producing a variable dimensioned recess in an acetabular region having the same configuration throughout an extension range of the reaming head." Unlike the rotating cutters of Fishbein, the present invention allows reaming acetabular regions having a variable dimension but retaining the same configuration for each size of the recess. As a result, the present invention can provide intermediately sized recesses having the same configuration between a fully retracted reaming position and a completely extended reaming position. For example, if the sections are configured in a hemispherical arc, an acetabular region formed using the reamer will have generally the same hemispherical configuration regardless of the dimensions of the recess. In contrast, as a result of the cutters pivoting outwards from respective pivot pins, the device of Fishbein results in a continuously variable configuration of an acetabular region responsive to a distance the cutters are pivoted away from the reaming head. Accordingly, Fishbein cannot provide a variable dimensioned recess having the same configuration having the same configuration throughout an extension range of the reaming head. For all the above reasons, claim 17 is believed to define patentably distinct features not taught or suggested in Fishbein.

The Kuslich patent also fails to teach or suggest the present invention as recited in new claim 17. In contrast to a "plurality of segments being generally symmetrically distributed about a center point of the reaming head, each of the

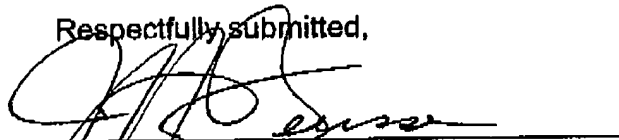
Application No. 10/617,063

plurality of segments being extendable along radial lines from the center point," Kulisch teaches a pair of segments (e.g., blades 142, 144) pivotally mounted for allowing the blades 142, 144 to retract or expand relative to a shaft 140 by rotating about a hinge pin 146. See for example Kuslich, FIG. 6, column 2, lines 49-50 and column 3, lines 43-46.

Furthermore, because of the pivoting action of Kuslich at a point remote from the blades 142, 144, the reamer of Kuslich cannot produce "reaming head producing a variable dimensioned recess in an acetabular region having the same configuration throughout an extension range of the reaming head." Rather, it appears the blades 142, 144 of Kuslich would produce a different configuration for different dimensions of a recess responsive to a distance the blades 142, 144 are pivoted outwardly about the hinge pin 146 away from the shaft 140. Accordingly, it is believed that the reamer of Kuslich would not work for reaming variably dimensioned acetabular regions having the same configuration. For the above reasons, claim 17 is believed to define patentable subject matter in view of Kuslich.

For all the above reasons, applicant submits that the specification and claims are now in proper form and each claim defines patentable subject matter over the cited prior art. Therefore, applicant requests reconsideration of the application and allowance of claims 1 and 5-17 in light of the foregoing amendments and remarks.

Respectfully submitted,



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Application No. 10/617,063

CERTIFICATE OF TRANSMISSION

I HEREBY CERTIFY that this Amendment is being FAXED to the U.S. Patent Office at 703-872-9306 (Central Fax Number) on this 2nd day of February, 2005.

  
James H. Beusse